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In re Application of :
DAVID BAILEY ET AL. :
Appl. No.: 10/018,061 : DECISION UNDER
PCT No.: PCT/AU00/00669 : 37 CFR 1.181
Int. Filing Date: 16 June 2000 :
Priority Date: 18 June 1999 :
Agent's File Reference: APV 31535 :
For: CATHODE PLATE

Applicants' 30 July 2002 "Petition To Reset Mail Date Of Notification Of Missing Requirements And Retransmission Of Request To Reset Mail Date Of Notification Of Missing Requirements" is being treated as a petition under 37 CFR 1.181 requesting relief based on non-receipt of the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905 mailed 07 February 2002). No petition fee is required. The petition is **DISMISSED**.

BACKGROUND

On 14 December 2001, applicants filed U.S. application 10/018,061 as a national stage entry of international application PCT/AU00/00669, which claimed priority to an Austrian application filed 18 June 1999. The international application as filed did not include an executed oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b).

On 07 February 2002, The United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE" (Form PCT/DO/EO/905) informing applicants that the application does not contain an oath or declaration of the inventors.

On 30 July 2002, applicants filed the present petition requesting relief based on non-receipt of the Form PCT/DO/EO/905 mailed 07 February 2002.

DISCUSSION

The Official Gazette, at 1156 OG 53, provides that a petition requesting relief based on the grounds that an Office action was not received must be accompanied by a statement that (1)

the Office action was not received, (2) attests that a search of the file jacket indicates that the Office action was not received, (3) attests that a search of counsel's docket records indicates the Office action was not received and (4) the Petition must also be accompanied by copies of the docket records where the non-received Office action would have been entered (See also, Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971)). MPEP 711.03(c) provides in part that:

"A copy of the docket record where the nonreceived communication would have been entered had it been received and docketed must be attached to and reference in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action".

A review of the papers filed on 29 August 2002 reveals that applicants have not satisfied items (2), (3) and (4) above to establish non-receipt of the Form PCT/DO/EO/905 mailed 07 February 2002. Accordingly, applicants' petition cannot be granted at this time.

CONCLUSION

Applicants' petition for remailing the Form PCT/DO/EO/905 and resetting the period for response therein mailed 07 February 2002 is **DISMISSED** without prejudice. The request for remailing of the Form PCT/DO/EO/905 is also dismissed as moot in view of the fact that a copy of the Notification was previously faxed to applicant.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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